

# SEWARD & KISSEL LLP

January 10, 2006

## Memorandum to Our Mutual Fund Clients and Friends

### Securities and Exchange Commission Amends EDGAR Rules Concerning Mutual Fund and Separate Account Filings

#### I. INTRODUCTION

The Securities and Exchange Commission (the “SEC”) has adopted a rule expanding the information that certain open-end management investment companies (“Funds”) and insurance company separate accounts (“Separate Accounts”) must identify in the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system filings.<sup>1</sup> The rule will require Funds and Separate Accounts to identify in their EDGAR system filings information relating to their series and classes (or contracts, for Separate Accounts). The SEC also amended the EDGAR Filing Rules to require sales literature and fidelity bonds and related documents to be filed electronically and to make several minor and technical amendments. The changes are intended to keep EDGAR technologically current and to make it easier for the investing public and SEC staff to track filings made for specific series or classes of mutual funds and individual contracts of insurance company separate accounts.

#### II. COMPLIANCE DATES

- New Series/Class Identification Information: February 6, 2006
- Filing of Sales Literature and Fidelity Bonds: June 12, 2006

#### III. IDENTIFICATION OF SERIES AND CLASSES

Under new Rule 313 of Regulation S-T, Funds and Separate Accounts that register on Forms N-1A, N-3, N-4 or N-6 will be required to obtain identifiers for their series and classes or contracts. These identifiers will be used to identify electronically the filings for a particular series, and class or contract and will be a substantive requirement of their filing. The procedures by which a Fund must obtain and use these identifiers are described below. Separate Accounts will follow the same procedure to obtain identifiers for their contracts.

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<sup>1</sup> SEC Release Nos. 33-8590; 34-52052; 35-28002; 39-2437; IC-26990 (July 18, 2005).

#### A. Existing Series and Classes

For existing series and classes, a Fund is required to enter series and class information onto a special section of the EDGAR Filing Web site<sup>2</sup> (the Series and Classes Information Page). A Fund must enter its series names, class names and ticker symbols, if any. After the information is entered, the SEC will issue series and class identifiers via e-mail notification. A Fund that is not organized as a series company and that has no separate classes will be deemed to have one series and class and will have to obtain a series identifier and include that identifier in specified filings.

A Fund must use the Series and Classes Information Page to update series and class information as required upon specified events, such as name changes, deactivation, liquidation or other events resulting in the elimination of a series or class or deregistration of the Fund. All Funds will be required to have entered information for their existing series and classes and received their identifiers no later than February 6, 2006. Beginning February 6, 2006, EDGAR will not accept specified filings without required series and class identifiers (the “Mandatory Series/Class Identification Date”).

#### B. New Series and Classes

If a Fund adds a new series or class on or after the Mandatory Series/Class Identification Date, the information about the new series or class is added to the EDGAR system in a different way. The Fund must enter information concerning its new series or classes in a separate area of the EDGAR submission template as part of the substantive filing by which it adds the new series or class. Similar to Funds with existing series and classes, the identifiers for new series and classes added by means of the submission template will be available to the Fund via e-mail notification following the filing in which the information was entered.<sup>3</sup>

#### C. Consequences of Not Obtaining Identifiers in a Timely Manner

If a Fund fails to enter its information in a timely manner and receive series or class identifiers, it may be required to file a post-effective amendment to generate the identifiers through the submission template. Until a Fund provides the information concerning its series and classes and is issued identifiers, it will not be able to make other filings that require series and class identifiers. Because the identifiers will be a substantive requirement of a Fund’s filing, a filing will be deemed not to have been made if the required identifiers are not correctly used.

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<sup>2</sup> The address for the EDGAR Filing Web site is <https://www.edgarfiling.sec.gov/>.

<sup>3</sup> The notice of acceptance or suspension for any submission requiring series and class identifiers will contain the included existing identifier(s) and series and class name(s) in addition to the information that is currently contained in the notice. A notice of acceptance will also contain new identifiers, if any, added in the filing. A notice of suspension will not include identifiers that would have been added with the intended filing.

#### D. Duty to Update Information and Electronic Filing Responsibilities

Funds will have a duty to update and keep current their series and class information. Filers will be required to update their information by means of the Series and Classes Information Page for series and class name changes, addition of ticker symbols or deactivation.

With respect to the filing and updating requirements, the SEC emphasizes that it is a Fund's responsibility to ensure the correctness of its information and the use of such information in each filing on the EDGAR system. This responsibility includes ensuring the correctness and timeliness of updates to names and deactivations of series and/or class identifiers. To ensure that the correct information is contained in a Fund's EDGAR submissions, including the correct use of CIKs and series and class identifiers, the SEC recommends that these items be addressed in the Fund's written policies and overseen by the Fund's chief compliance office.

#### **IV. OTHER AMENDMENTS**

##### A. Sales Literature and Fidelity Bonds

Effective June 12, 2006, Funds will have to file sales literature and fidelity bonds and related claims and settlements electronically. Sales literature will be required to be filed in HTML format. Under the amended rule litigation materials may still be filed either in paper or electronically.

##### B. Technical Amendment

The SEC also adopted technical amendments to the EDGAR filing rules. Among other things, the technical amendments provide that incorporation by reference in an EDGAR filing by a registered Fund or a business development company must relate only to documents that have been filed in electronic format on the EDGAR system.

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If you have any questions or need more information, please contact us at (202) 737-8833.

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